IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition Nos.8707 and 20791 of 1998

Dated: 26 -06-2007

W.P.No.8707 of 1998:
Between:

1. Gollapalli Gurraju, s/o Venkata Raju and 30 others.

... Petitioners

and

1. Special Deputy Collector, Land Acquisition,
Andhra Pradesh Industrial Infrastructure Corporation,
Kakinada,
East Godavari District and another.

... Respondents

W.P.No.20791 of 1998:
Between:

1. B. K.Venkateswarlu, s/o late Hanumanthaiah and 7 others.

... Petitioners

and

1. The District Collector, Anantapur and 2 others.

... Respondents

COMMON ORDER:

As the point involved in these two writ petitions is one and the same, they are heard and disposed of by this common order.

2. W.P.No.8707 of 1998 is filed seeking a *mandamus* to declare the notification, dated 02-04-1996 and the declaration dated 27-02-1996 issued under Sections 4(1) and 6 of the Land Acquisition Act, 1884
(for short, 'the Act') for acquisition of the lands in an extent of Acs.88-78 cents belonging to petitioners situated in Nemam village, Kakinada Rural Mandal, East Godavari District and the award dated 30-03-1998 passed in Award No.1 of 1998 by first respondent, as arbitrary and illegal.

3. W.P.No.20791 of 1998 is filed seeking a *mandamus* to declare the notification and declaration, for acquisition of the land in an extent of
Ac.1-27 cents in Sy.No.61-2B of Appajipalyam village, h/o Jambugumpala village, Kondurpi Mandal, Anantapur District, issued under Sections 4(1) and 6 of the Act and published in 'Vaartha daily', dated 09-04-1996 and
11-04-1996, as arbitrary and illegal.

4. It is the case of petitioners in W.P.No.8707 of 1998 that they own various extents of lands in Nemam village, Kakinada (Rural) Mandal, East Godavari District and the first respondent got published notification under Section 4(1) of the Act in Eenadu newspaper on 02-04-1996 stating that the lands admeasuring Acs.88-76 cents in Nemam village Block II are being acquired for the purpose of development of industrial area of APIIC Ltd. The respondents have

dispensed with the enquiry under Section 5-A of the Act, invoking the urgency clause as provided for under Section 17(4) of the Act. Later, first respondent – Land Acquisition Officer passed an award bearing Award No.1 of 1998 on 30-03-1998. It is stated that in the said notification respondents have incorrectly mentioned the names of some of the owners or occupiers of the lands in question and that till date, possession of the lands notified has not been taken by respondents and the lands are continued to be in possession of petitioners. It is further stated that since the declaration, dated 27-02-1996, was issued much earlier to Section 4(1) notification, dated 02-04-1996, which is violative of the provisions of the Act and that the award in question was not passed within two years from the date of the declaration, as provided for under Section 11 of the Act and that as no fresh declaration was published beyond one year from the date of Section 4(1) notification, they approached this Court and filed the present writ petition initially seeking to declare the notification, dated 02-04-1996 and the declaration, dated
27-02-1996, as illegal and arbitrary and subsequently amended the prayer questioning the award dated 30-03-1998 passed by first respondent also.

5. In his counter affidavit, first respondent, while denying the averments mentioned in the affidavit filed in support of the writ petition, contended that as per the requisition sent by the General Manager (Lands) of APIIC Limited, Hyderabad, for acquiring the lands to an extent of Acs.150-30 cents in Sy.No.201/1 etc., of Nemam village for industrial development area, the notification under Section 4(1) of the Act was got approved by second respondent vide proceedings dated 21-02-1996.

The said notification was published in A.P. Gazette No.4/96 on 21-02-1996 and in the newspapers i.e. Prajasakthi on 02-04-1996, Andhra Jyothi on 01-04-1996 and Eenadu on 02-04-1996. The substance of the said notification was also published in the locality on 01-04-1996.

The draft declaration under Section 6 of the Act was approved by the District Collector vide proceedings dated 27-02-1996 and the same was published in A.P. Gazette on 27-02-1996 and in newspapers i.e. Visalandhra on 06-04-1996, Andhra Jyothi on 07-04-1996 and in Prajasakthi on 08-04-1996. The names of the owners of the lands were published basing on the revenue records. The physical possession of the lands was taken on 30-03-1998 and handed over the same to the requisitioning authority on the same day after passing the award. Immediately thereafter, notices under Section 12(2) of the Act were also issued to all the awardees. The allegation of petitioners that the draft declaration was published before the publication of draft notification is baseless and contrary to the material on record. Reasonable opportunity was already given to all the persons interested in the land by way of issuing notices under Sections 9(1), 10, 9(3) and 10 of the Act.

The petitioners have attended the award enquiry but they did not submit any objections either to the draft notification or the draft declaration.

The award was passed within two years from the date of publication of draft declaration and as such the contention of petitioners that the award was passed beyond two years from the draft declaration is false and baseless.

6. Petitioners have filed a reply affidavit to the counter affidavit

filed on behalf of first respondent. Petitioners have also filed an additional affidavit in support of their claim, for which an additional counter affidavit was filed on behalf of first respondent. Against which, another reply affidavit was filed on behalf of petitioners.

7. It is the case of petitioners that the Village Administrative Officer, Nemam, Kakinada Rural Mandal issued a certificate dated 17-02-1999 stating that they are cultivating the lands acquired by APIIC, that the Sarpanch, Nemam Grampanchayat also issued a similar certificate, dated 10-02-1999 and that only some of them received notices under

Section 12(2) of the Act and none of them have either participated in the award enquiry or received any compensation muchless an amount of Rs.12,26,660/-. It is their further case that even assuming for the sake of argument that possession was taken on 30-03-1998, the delay of more than two years in taking possession shows that there was no real urgency as mentioned in the notification and invocation of urgency clause as provided for under Section 17(4) of the Act is a colourable exercise of power. It is also their case that after they obtained interim directions from this Court on 31-03-1998, including stay of their dispossession from the lands, in W.P.M.P.No.101586 of 1998, to get over the same respondents have created a record of the alleged taking possession and passing of the award on 30-03-1998, i.e. a day before this Court granted interim directions, by ante-dating the award.

8. On the other hand, it is contended by first respondent that the reports of the Village Administrative Officer and Sarpanch, Gram Panchayat, Nemam village that the lands under reference were in possession of the ryots as on February, 1999 is not at all correct since the possession of the land was taken by the Land Acquisition Officer

on

30-03-1998 and handed over the same to the requisitioning Department (i.e) Zonal Manager, A.P.I.I.C. Limited, Kakinada on the same day under proper acknowledgment. All the parties interested in the lands have attended the award enquiry and an amount of Rs.12,26,660/- for an extent of Acs.7-06 cents was already disbursed to the awardees. The first petitioner and others attended the award enquiry and they did not submit any objections either to the draft notification or draft declaration and first petitioner has also claimed compensation and the said claim is under consideration. Apart from the first petitioner, eight others have received compensation. The petitioners did not seek for a reference under

Section 18(2) of the Act before the Land Acquisition Officer at any point of time, but they can avail the legal remedy as provided for under Section 28A of the Act, as some of the persons who had taken compensation already sought for a reference under Section 18(2) of the Act and the same was referred to the Civil Court.

9. It is the case of petitioners in W.P.No.20791 of 1998 that the land in an extent of Ac.4-52 cents in Sy.No.61 situated at Appajipalyam village, h/o Jambugumpala village, Kundurpi Mandal, Anantapur District, originally belongs to the father of petitioner Nos.1 to 5 and the father of petitioner Nos.6 to 8. After their demise, petitioners came to be in possession and enjoyment of the same and are regularly paying taxes to the Government. While so, first respondent issued a notification under Section 4(1) of the Act, which was published in Vaartha daily on 11-04-1996, proposing to acquire the land in an extent of Ac.1-27 cents of land in the above survey number for the purpose of providing house sites to weaker sections. In the said

notification it was mentioned that the urgency clause as provided for under Section 17(4) of the Act was invoked dispensing with the enquiry under Section 5-A of the Act. In the notification the names of the fathers of the respective petitioners have been mentioned. The declaration under Section 6 of the Act was issued on the next day. Thereafter, a notice under Section 9(1) of the Act, dated 04-04-1997 was sent to petitioners and the same was received in September, 1997. Immediately thereafter petitioners filed their objections stating that the land is very valuable and the same should not be acquired. It is their grievance that the first respondent arbitrarily dispensed with the enquiry under Section 5-A of the Act, that possession of land has not been taken by respondents within a period of three months as provided for under Section 17(5) of the Act
(A.P. Amendment Act XXII of 1976), and that no opportunity was given before initiating the land acquisition proceedings. Hence, they filed the present writ petition seeking a *mandamus* to declare the notification and declaration, for acquisition of the land in an extent of Ac.1-27 cents in Sy.No.61-2B of Appajipalyam village, h/o Jambugumpala village, Kondurpi Mandal, Anantapur District, issued under Sections 4(1) and 6 of the Act and published in 'Vaartha daily', dated 09-04-1996 and 11-04-1996,
as arbitrary and illegal.

10. Respondents 1 to 3 in W.P.No.20791 of 1998 in their counter affidavit, while denying the averments mentioned in the affidavit filed in support of the writ petition, contended that the land in an extent of
Ac.1-27 cents classified as Government Dry in Sy.No.61/2B of Jumbugupala village of Kundurpi Mandal was acquired for the purpose of house sites to the houseless Backward Class people of

Appajipalyam,

H/o Jumbugumpala village of Kundurpi Mandal as there are no Government lands in and around Appajipalyam village. Accordingly, draft notification and draft declaration were got published in the Anantapur District Gazette on 23-03-1996 and 24-03-1996, respectively, as per the Land Acquisition Rules. The draft notification under Section 4(1) of the Act was published in Eenadu on 03-04-1996 and Vaarta on 11-04-1996.

The draft declaration under Section 6 was also published in Eenadu on

10-04-1996 and in Vaartha on 09-04-1996 respectively. The substance of the notification was also published in the village, but despite giving sufficient time, none submitted objection for the acquisition. Therefore, notices under Sections 9(1), 10, 9(3) and 10 of the Act were served on the legal heirs of the pattadars by the Village Administrative Officer on

29-09-1997. In response to the notices, petitioners, who were enjoying the land proposed for acquisition, have filed an objection petition, and the Land Acquisition Officer, after examining the objection petition, issued an endorsement in Rc.G/466/95 dated 27-10-1998 stating that the objection petition cannot be considered as the land acquisition process in this case is at the submission of preliminary valuation to the Collector. Later, the Land acquisition Officer passed Award No.5/98, on 10-04-1998. Thereafter, notices under Section 12(2) of the Act were sent to the Mandal Revenue Officer, Kundurpi, for service on the awardees to receive compensation as per the award. During the course of enquiry,

the pattadars have not objected for the acquisition and have also not filed any objection petition. Therefore, after passing the award, the

acquired lands vest with the Government. Since the Government has instructed to provide house sites to the weaker sections at village level on war footing basis and in view of the urgency, enquiry under Section 5-A of the Act has been dispensed with by invoking the urgency clause as provided for under Section 17(4) of the Act. The award was passed on 10-04-1998 and notices under Section 12(2) of the Act were also issued to the awardees on 20-05-1998 to receive compensation and at the stage of disbursement of the compensation and house site pattas to the beneficiaries, petitioners have filed the present writ petition.

11. Heard Sri M.S. Ramachandra Rao, learned counsel appearing for petitioners in W.P.No.8707 of 1998, Sri O. Manohar Reddy, learned counsel appearing for petitioners in W.P.No.20791 of 1998 and the learned Government Pleader for Land Acquisition appearing for respondents.

12. Learned counsel appearing for petitioners contended that even though there is no urgency for acquiring the lands in question, respondents have dispensed with the enquiry under Section 5-A of the Act, invoking the provisions of Section 17(4) of the Act in colourable exercise of powers and failed to take possession of the lands in question within three months from the date of notifications as provided for under Section 17(5) of the Act and, therefore, the notifications as well as the awards passed in that regard have to be set aside. In support of their contentions, learned counsel appearing for petitioners have drawn my attention to various provisions under the Act and also relied on a decision in **DANDU TRINADHA RAJU v. DISTRICT COLLECTOR, VISAKHAPATNAM**[1].

13. Per contra, learned Government Pleader for Land Acquisition

contended that as the Government has instructed to provide house sites to the weaker sections on war footing basis, respondents have dispensed with the enquiry under Section 5-A of the Act, invoking the provisions of Section 17(4) of the Act and as such, respondents have not violated any of the provisions under the Act. Learned Government Pleader further contended that in **V. ADAMMA v. DISTRICT COLLECTOR, SRIKAKULAM**[2], a Division Bench of this Court held that as the Parliament has amended Section 17 of the Act inserting sub-section (3-A), the State Amendment in regard to insertion of sub-section (5) of Section 17 of the Act, has become inconsistent with or repugnant to the subsequent Central Amendment, and following the said judgment, the State filed a petition seeking review of the judgment in ***Dandu Trinadha Raju's case (1 supra)*** stating that the decision in ***V. Adamma's case (2 supra)*** was not brought to the notice of the Division Bench, which passed the judgment in ***Dandu Trinadha Raju's case (1 supra)*** and in the said review application stay of the operation of the judgment was granted by the Division Bench and as such the judgment in ***Dandu Trinadha Raju's case (1 supra)*** cannot be relied upon.

14. Facts, which are not in controversy, are: The notification under Section 4(1) of the Act in W.P.No.8707 of 1998 was published in A.P. Gazette on 21-02-1996 and in newspapers i..e., Prajasakthi on 02-04-1996, Andhra Jyothi on 01-04-1996 and in Eenadu on 02-04-1996 and the consequential declaration under Section 6 of the Act was published in A.P. Gazette on 27-02-1996 and in news papers i..e., Visalandhra on 06-04-1996, Andhra Jyothi on 07-04-1996 and in Praja Sakthi on 08-04-1996. Similarly, notification under Section 4(1) of the Act in W.P.No.20791 of 1998 was published in A.P. Gazette on 23-07-

1996 and in newspapers i.e., Eenadu on 03-04-1996 and in Vaartha on
11-04-1996, and the consequential declaration under Section 6 of the Act was published in A.P. Gazette on 24-03-1996 and in newspapers i.e., Eenadu on 10-04-1996 and in Vaartha on 09-04-1996.

15. According to respondents, possession of the lands covered by W.P.No.8707 of 1998 was taken by them and handed over to the requisitioning authority on the date of passing of the award i.e. on 30-03-1998. Coming to W.P.No.20791 of 1998, according to petitioners, the lands are still in their possession. Though a detailed counter affidavit is filed, nowhere it is stated about the date of taking possession, but their contention is that after passing the award, the acquired lands have become Government lands and possession of the lands vest with the Government.

16. It is an undisputed fact that in both the matters enquiry as contemplated under Section 5-A of the Act was dispensed with by invoking the urgency clause as provided for under Section 17(4) of the Act. In both these matters, respondents have not taken possession of the lands within three months from the date of issuance of notifications under Section 4(1) of the Act, as provided for under Section 17(5) of the Act.

17. In view of the factual scenario, now it is to be seen the relevant provisions under the Act and the decisions relied on by learned counsel on either side.

18. From a reading of the relevant provisions of the Act it is clear that whenever it appears to the appropriate Government that the land in any locality is likely to be needed for any public purpose, it shall

publish a notification under Section 4(1) of the Act and also publish a declaration under Section 6 of the Act within one year from the date of publication of notification under Section 4(1) of the Act in the Official Gazette and also in two daily newspapers and conduct an enquiry under Section 5-A of the Act after giving notice to the land owners and hearing their objections.

If the Collector intends to take possession of the land, he shall issue notice to the persons interested under Sections 9 and 10 of the Act and thereupon pass an award under Section 11 of the Act, within a period of two years, as provided for under Section 11-A of the Act, from the date of publication of the declaration under Section 6 of the Act. If the Collector dispenses with the enquiry under Section 5-A of the Act by invoking urgency clause under Section 17(4) of the Act, he shall take possession of the lands in question within three months from the date of notification under Section 4(1) of the Act as provided for under Section 17(5) of the Act (A.P. Amendment) and before taking possession of such land he shall tender payment of eighty per cent of the compensation for such land as estimated by him to the persons interested entitled thereto, as provided for under Section 17(3-A) of the Act (Central Amendment).

19. In ***Dandu Trinadha Raju's case (1 supra)*** it was held as follows--

> "It is contended that Section 17 of the Act prior to the State amendment provided for invoking urgency clause and dispensing with enquiry as contemplated under Section 5-A of the Act to enable the State to take possession before passing of award under the Act, but by the State amendment
> sub-section (5) has been introduced by which a condition was put that unless possession is taken within three months of invoking of urgency clause, 5-A enquiry had to

be held and acquisition proceedings proceed thereafter and a reference is given to Section 17(3-A) of the Act."

"There is no *inter se* conflict between different provisions of Section 17 of the Act. Section 17(3-A) of the Act takes care of a particular situation, whereas Section 17(5) (a) and (b) takes care of altogether a different situation. Therefore, the suggestion that Section 17(5) (a) and (b) of the Act should be deemed to have been repugnant to the Central Amendment is not correct. The mere fact that the possession was not taken for a period of three months from the date of notification under Section 4(1) of the Act is in itself proof that there was no urgency. These three months could have been utilized for conducting an enquiry under Section 5-A of the Act."

20. Learned counsel appearing for petitioners also contended that simply because a judgment was stayed, it does not mean that the ratio laid down in such judgment is wiped out. In support of their contentions, learned counsel relied on a decision in **GOVT. OF A.P. v. N. RAMIREDDY**[3], wherein it was held at para 11 of page 443, as follows---

"It is now a well settled principle of law that the ratio of a judgment is the reasons assigned in support thereof. While a Court of appeal stays the operation of the judgment, it says the further implementation as between the parties of the operation thereof, and thereby the ratio of the decision cannot be said to be wiped of."

So, the contention of the learned Government Pleader for Land Acquisition that the decision in ***Dandu Trinadha Raju's case (1 supra)*** cannot be relied upon cannot be countenanced, since the ratio of a judgment of the Division Bench continues to be in existence not withstanding the stay granted in the review petition, and it is a binding precedent.

21. No doubt, in ***V. Adamma's case (2 supra)*** it was held that the A.P.Amendment to Section 17 of the Act by insertion of sub-section (5)

to Section 17 of the Act that possession shall be taken within three months from the date of publication of notification under Section 4(1) of the Act,

is repugnant to the Central Amendment to Section 17 of the Act by insertion of sub-section (3-A) to Section 17 of the Act, directing payment of eighty per cent of compensation of the land to the persons deprived of such land. But, however, subsequently, the Apex Court in **SATENDRA PRASAD JAIN v. STATE OF U.P.**[4], held at paragraph 17 as follows---

> "In the instant case, even that 80 percent of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the first respondent……".

22. Therefore, in view of the decision rendered by the Apex Court in ***Satendra Prasad's case (4 supra)*****,** as rightly contended by learned counsel appearing for petitioners that the basis in ***V. Adamma's case (2 supra)*** that payment of eighty per cent of compensation at the time of taking possession is mandatory is no longer in force.

23. Coming to the case on hand, if really, there was any urgency, respondents should have taken possession of the lands in question within three months from the date of Section 4(1) notification as provided for under Section 17(5) of the Act. Therefore, it can be said that there was no urgency at all and the enquiry under Section 5-A of the Act could have been conducted, as it is a valuable right of the owners. Further from a perusal of the notifications under Section 4(1) of the Act, it appears the respondents were not serious and they also did not mention the names of some of the owners. In fact, even eighty

per cent of the compensation as required under Section 17(3-A) of the Act has not been tendered to the petitioners. Simply because petitioner Nos.1, 3, 4, 5, 14, 17, 23, 24 and 28 in W.P.No.8707 of 1998 received compensation after August, 2000, that too under protest, that does not mean that the respondents have satisfied the ingredients of Section 17(3-A) of the Act.

24. Having regard to the totality of the facts and circumstances of the case and following the ratio laid down in ***Dandu Trinadha Raju's case (1 supra)***, it cannot be said that the notifications issued under Section 4(1) of the Act are contrary to law. However, as Section 6 of the Act provides for issuance of a draft declaration within one year from the date of notification under Section 4(1) of the Act and if this Court holds that the notifications in question, dated 21-02-1996 and 23-07-1996 respectively, issued under Section 4(1) of the Act are justified, the compliance of issuing draft declarations as provided for under Section 6 of the Act cannot be done. Hence, this Court has no option, but to quash the notifications issued under Section 4(1) of the Act.

25. Accordingly, both the writ petitions are allowed and the notifications under Section 4(1) of the Act, dated 21-02-1996 and 23-07-1996 respectively in these writ petitions and the consequential proceedings including the awards are hereby set aside. However, if the authorities so choose that it is necessary to acquire the lands in question, they may do so in accordance with law after issuing notifications under Section 4(1) of the Act afresh. No costs.

JUSTICE GOPALAKRISHNA TAMADA

Dt.26-06-2007

GLV

---

[1] 2006(2)ALT 9 (D.B.)

[2] 1991(1) APLJ 330 (D.B.)

3 2001(1) ALT 438 (D.B.)

4 (1993) 4 Supreme Court Cases 369